

REMARKS

Claims 1-8 remain pending in this application.

Claims 1-8 are rejected under 35 USC 103(a) on Niederer (US 4,359,785) in view of Tanamal (US 5,755,811) and Itoman (US 6,190,417). This rejection is respectfully traversed.

Claim 1 recites a hip prosthesis having a shaft configured to be inserted into a femur. The shaft has a proximal part configured to be inserted in a metaphyseal region of the femur. The proximal part comprises fins that project from front and rear faces of the proximal part, each fin extending from a distal end of the proximal part to a proximal end of the proximal part. None of the cited references disclose or suggest fins as claimed.

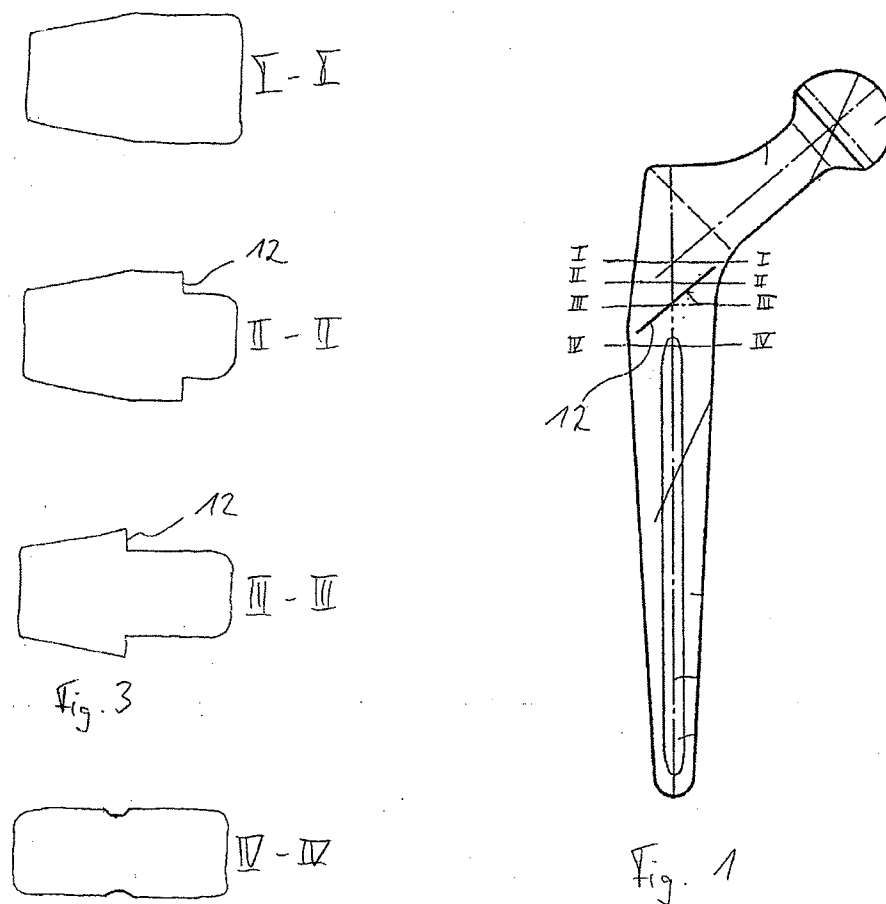
On page 3, item 2, of the Office Action, the Examiner relies on FIG. 2 of Niederer as disclosing a fin which extends from a distal end of the proximal part to a proximal end of the proximal part. This is an incorrect interpretation of FIG. 2.

Niederer discloses a hip prosthesis with a slim shaft 2 and a thicker neck 6. At some location between neck 6 and shaft 2 there is a transition between the thicker neck portion and the slimmer shaft portion. This transition is located at line 12 in FIG. 1 of Niederer. Niederer states that this line 12 is arranged not perpendicularly to longitudinal axis 3 of shaft 2, but at some angle relative to this axis. See Niederer, column 2, lines 8 to 9. The face of the prosthesis of Niederer is free from any protrusion apart from the transition at line 12 in FIG. 1, which is not, under any interpretation, a "fin" as claimed. Above line 12, the prosthesis has a smooth surface.

FIG. 2 of Niederer illustrates a left side view of the prosthesis of FIG. 1. In this view, the prosthesis does not have any protrusions, i.e., "fins," at all. The inner and outer parallel vertical lines in the upper portion of the prosthesis merely indicate that the width of the prosthesis increases from lateral side 4 towards neck 6. This is confirmed by FIG. 3 of Niederer, which illustrates that the width of lateral side 4 corresponds to the inner parallel vertical lines in FIG. 2, and that the maximum width corresponds to the outer parallel vertical lines in FIG. 2. The parallel vertical lines in the upper portion of FIG. 2 thus illustrate the tapering of the prosthesis towards lateral end 4 as shown in FIG. 3.

Consequently, FIG. 2 of Niederer does not disclose any fin. It is improper for the Examiner to rely on FIG. 2 of Niederer as disclosing a fin.

In order to provide the disclosure of Niederer's prosthesis in as clear a manner as possible, an illustration is provided below that depicts four cross sections (I-I to IV-IV) of the Niederer prosthesis.



Drawing IV-IV illustrates the slim and grooved cross section of shaft 2 and can be applied accordingly to most of the shaft below line IV-IV in the copy of FIG. 1 of Niederer. Drawing I-I illustrates the cross section in the neck portion of the prosthesis and can be applied accordingly to any portion of the prosthesis above line I-I in the copy of FIG. 1. Drawings II-II and III-III illustrate the transition between the thicker neck portion and the slimmer shaft portion. The transition is formed by a collar-like formation 12 which corresponds to line 12 in FIG. 1.

Consequently, there is no fin on the face of the prosthesis of Niederer. FIG. 2 of Niederer does not disclose any fin at all. FIG. 2 only discloses a tapering of the prosthesis towards the lateral face as depicted above. Transition surface 12 is not a fin, nor would transition surface 12 be considered a fin by one of ordinary skill in the art. Contrary to the Examiner's findings, there is no disclosure or suggestion in Niederer of a fin which extends from a distal end of the proximal part to a proximal end of the proximal part as claimed. This deficiency of Niederer is not compensated for by the additional cited references of Tanamal or Itoman.

Accordingly, since Niederer does not provide the disclosure for which it is cited, and the cited references fail to disclose or suggest all of the elements required by claim 1, the rejection of claim 1 and the claims depending thereon should be withdrawn.

In view of the above, early action allowing claims 1-8 is solicited.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing Docket No. **246472007600**.

Dated: February 19, 2010

Respectfully submitted,

By Bradley J. Meier
Bradley J. Meier
Registration No.: 44,236

Morrison & Foerster LLP
1650 Tysons Blvd, Suite 400
McLean, Virginia 22102
Telephone: (703) 760-7700
Facsimile: (703) 760-7777